

REMARKS/ARGUMENTS

Applicants' attorney thanks the Examiner for forwarding copies of the asserted foreign references. The attorney file copies of these references were discarded as part of normal file maintenance upon receipt of the previous notice of allowance. Again, the applicant's thank the Examiner for his courtesy.

Applicants' kindly request entry of the following amendments and added claims. First, **Claims 1-37, 44, 46, 49, 51-53, 58-64, 66, 71-72, 76, 77, and 79-82 are cancelled. Claims 39, 65, 67-70, 73, 75, and 78 are amended to clarify certain patentable issues. Claims 86-88 are added. Claims 38-43, 45, 47, 48, 50, 54-57, 65, 67-70, 73-75, 78, and 83-88 are now pending in the application.**

If any fees are due in connection with the filing of this Amendment, the Commissioner is hereby authorized to charge such fees to Deposit Account 50-0388 (Order No. SMBRP001).

Reconsideration of this application in view of the comments and amendments made herein is respectfully requested. Should the Examiner have any questions pertaining to this application, Examiner is earnestly invited to telephonically contact the Applicants' attorney at the Examiner's convenience.

Claim 68:

As a preliminary matter the applicants wish to address issues concerning Claim 68. Claim 68 has been amended. However, such amendment merely incorporates the limitations of all base and intervening claims (i.e., Claims 65, 66, 67). Accordingly, the scope of claim 68 is unchanged. The applicants believe that Claim 68 should be allowable as drafted.

Rejections Under 35 U.S.C. § 102:

Rejection of Claims in view of *Lovatt*

Claims 39, 45, 47, 48, 54, 56-58, 61, 65-69, 76, 77, 79, 80, 84, and 85 have all been **rejected** under 35 U.S.C. § 102 as being anticipated by *Lovatt* (GB 2 200 340 A, hereinafter "*Lovatt*").

Claims 58, 61, 66, 76, 77, 79, 80, and 89 have all been **cancelled**, thus this ground of rejection is moot as to those claims.

Claim 68

Despite superficial amendment, as discussed above, Claim 68 has not undergone any change in scope. The applicants' respectfully assert that the *Lovatt* reference is insufficient to establish a *prima facie* of anticipation as to Claim 68. Claim 68 recites a produce container with "a basket body having a lid" and "a latch for securing the lid to said basket body" and "a plurality of ventilation slots arranged to enable bi-directional cooling airflow through interior of the container". Significantly, Claim 68 also recites that the "walls of the basket are *substantially smooth*" (emphasis added).

The applicants point out that the *Lovatt* reference teaches a container having substantial ribbed wall surfaces (shown to great effect in Fig. 3 e.g., 12). This is significant because, as disclosed in the specification, because these ribs cut and dent the fruit during shipping. This damage is particularly troublesome soft fruit (e.g., strawberries, raspberries, and the like) is packaged. These fruits suffer from mold, dehydration, and other forms of spoilage at a vastly accelerated rate. The majority of these problems are directly attributable to damage caused by ribbed and edged containers such as taught in *Lovatt*. This small problem translates into tens of millions of dollars in economic loss every year. These concerns and difficulties they present are extensively discussed in the specification. The *Lovatt* container is precisely the type of container that causes the problems described in the specification. The point of the present invention is to replace the *Lovatt* container and other containers like it. The *Lovatt* container is not substantially smooth walled, but in fact has substantial structural reinforcement ribbing along its entire circumference. As is known to those in the art, substantially smooth refers to a minor deviation from smooth, perhaps due to manufacturing defects. It does not refer to the intentionally structural ribs of *Lovatt* which would in fact defeat the purpose of the claimed container. Should the Examiner prefer a characterization using a word other than "substantial", the applicants' in principle do not object to such. In short, the claim refers to smooth walled containers without reinforcing ribs and is therefore different from the teachings shown in *Lovatt*.

Additionally, the applicants point out that no latch is taught by the *Lovatt* reference. All that is stated is that the lid fits "snugly" on the base (*Lovatt* 2:22-25). This is not a latch nor does it suggest a latch.

Therefore, applicants' assert that *Lovatt* does not teach all limitations of Claim 68. Consequently, *Lovatt* alone fails to establish a *prima facie* case of anticipation as to Claim 68. Accordingly, the applicants respectfully request that this ground of rejection be withdrawn and Claim 68 be allowed.

Claim 39

As for **Claim 39**, the applicants' respectfully assert that the *Lovatt* reference is insufficient to establish a *prima facie* of anticipation. **Claim 39 recites a produce container with "a basket body having substantially smooth sided walls" as well as "a latch for securing the lid to said basket body". Also, Claim 39 requires "a plurality of ventilation slots ... arranged to enable ... bi-directional airflow of cooling air ... through the interior of the container".**

The applicants point out that the *Lovatt* reference teaches a container having substantial ribbed wall surfaces (shown to great effect in Fig. 3 e.g., 12) which in practice damage and dent fruit during shipping. This is particularly troublesome problem when used to package soft fruit (e.g., strawberries, raspberries, and the like). These concerns and difficulties they present are extensively discussed in the specification. In fact, *Lovatt* is precisely the type of container that causes the problems described in the specification. It is the significant improvements in performance of the present invention that make the *Lovatt* container obsolete. The *Lovatt* container is not substantially smooth walled, but in fact has substantial structural reinforcement ribbing along its entire circumference. Although not strictly believed necessary, applicants have removed the word substantial from the claim in an effort to clarify that the claim refers to smooth walled containers without reinforcing ribs such as those shown in *Lovatt*.

Again, the applicants point out that no latch is taught by *Lovatt*. All that is stated is that the lid fits "snugly" on the base (*Lovatt* 2:22-25). This is not a latch.

Additionally, although *Lovatt* includes ventilation openings, it does not teach "ventilation slots ... arranged to enable ... bi-directional airflow of cooling air ~~can~~ to pass through the interior of the container". The *Lovatt* container openings are in a configuration that "imparts a 'panting' effect" (*Lovatt* 4:15-19) as its mode of ventilation. In effect, compression and decompression exerted on the containers induce squeezing forces on the container that suck air in and push air out to cause the 'panting'. This has nothing to do with

the high pressure directed airflow cooling used in modern cooling compartments. This is what the claims mean by ventilation openings “arranged so that a bi-directional airflow of cooling air can pass through the interior of the container”. Nothing of the kind is taught by *Lovatt*. The directed airflow of the present specification is a forced airflow not passive respiration as taught by *Lovatt*. Importantly, “airflow” that would pass through the container (as claimed) is blocked by the lid of the *Lovatt* reference. The claimed invention enables a directed airflow to pass directly into one container from another container in order to enable efficient cooling. No lid overhang impedes this flow. This is simply impossible with the *Lovatt* construction. The overhanging lid (e.g., 32 Fig. 4) of *Lovatt* blocks the directed airflow from one container into another.

Accordingly, the *Lovatt* container does not teach “a plurality of ventilation slots ... arranged so that a bi-directional airflow of cooling air can pass through the interior of the container”. Therefore, *Lovatt* does not teach all limitations of Claim 39. Consequently, *Lovatt* alone fails to establish a *prima facie* case of anticipation as to Claim 39. Accordingly, the applicants respectfully request that this ground of rejection be withdrawn and Claim 39 be allowed.

As to the dependent claims, the applicants point out that many independent bases exist to support the patentability of these claims. However, in view of the underlying sufficiency of the base claims, a discussion of each independent ground of patentability is not deemed necessary at this time. Thus, for at least the reasons discussed above with respect to **Claim 39**, it is also submitted that a *prima facie* case of anticipation has not been established with respect to **Claims 45, 47, 48, 54, 56 and 57** which depend directly or indirectly on Claim 39. Consequently, Applicants respectfully request that this ground for rejecting Claims 45, 47, 48, 54, 56 and 57 also be withdrawn.

Claim 65

As for amended **Claim 65**, the applicants’ respectfully assert that the *Lovatt* reference is insufficient to establish a *prima facie* of anticipation as to amended Claim 65. Amended Claim 65 recites a produce container with “a **smooth walled** basket body” having a lid “**attached to the basket body with a hinge**”.

Lovatt does not teach a lid hingedly attached to the basket body. Therefore, *Lovatt* does not teach all limitations of Claim 65. Consequently, *Lovatt* alone fails to establish a

prima facie case of anticipation as to Claim 65. Accordingly, the applicants respectfully request that this ground of rejection be withdrawn and Claim 65 be allowed.

Additionally, for at least the reasons discussed above with respect to **Claim 65** it is also submitted that a *prima facie* case of anticipation has not been established with respect to **Claims 67, 69, 84, and 85** which depend directly or indirectly on Claim 65. Consequently, Applicants respectfully request that this ground for rejecting Claims 67, 69, 84, and 85 also be withdrawn.

Rejection of Claims in view of *Dehart*

Claims 58, 61, 65-67, 76, 77, 79, and 80 have all been rejected under 35 U.S.C. § 102 as being anticipated by *Dehart* (USPN 5,069,344, hereinafter “*Dehart*”).

Claims 58, 61, 66, 76, 77, 79, and 80 have all been cancelled, thus these rejections are moot as to those claims. The rejections of **Claims 65 and 67** are respectfully traversed.

As for **Claim 65**, the applicants’ respectfully assert that the *Dehart* reference is insufficient to establish a *prima facie* of anticipation of Claim 65 as amended. Claim 65 has been amended to include “a plurality of horizontally extending elongate ventilation slots defining vertically oriented openings arranged between the lid and basket body to enable bi-directional cooling airflow through interior of the container”. Applicants’ respectfully assert that the *Dehart* reference is insufficient to establish a *prima facie* of anticipation as to amended Claim 65.

Specifically, *Dehart* does not teach “ventilation slots ... between the lid and basket body”. *Dehart* also does not teach “horizontally extending elongate ventilation slots”. Also, *Dehart* does not teach “ventilation slots defining vertically oriented openings”. Absent such limitations, *Dehart* does not teach all limitations of Claim 65. Consequently, *Dehart* fails to establish a *prima facie* case of anticipation as to Claim 65. Accordingly, the applicants respectfully request that this ground of rejection be withdrawn and Claim 65 be allowed.

The applicants point out that many independent bases exist to support the patentability of the dependent claims. However, in view of the underlying sufficiency of the base claims, a discussion of each independent ground of patentability is not deemed necessary at this time. Thus, for at least the reasons discussed above with respect to Claim 65 it is also submitted that a *prima facie* case of anticipation has not been established with respect to dependent **Claim 67** which depends on Claim 65. Consequently, Applicants respectfully request that this ground for rejecting Claim 67 also be withdrawn.

Rejection of Claims in view of *Sharp*

Claims 65, 76, 77, and 78 have all been rejected under 35 U.S.C. § 102 as being anticipated by *Sharp* (GB 2 160 510 A, hereinafter “*Sharp*”).

Claims 76 and 77 have all been cancelled, thus these rejections are moot as to those claims. Claim 65 is amended and the rejections of **Claims 65 and 78** are respectfully traversed.

As amended, the applicants’ respectfully assert that the *Sharp* reference is insufficient to establish a *prima facie* of anticipation of **Claim 65**. Claim 65 has been amended to recite “a **smooth walled** basket body” and “a plurality of **horizontally extending elongate** ventilation slots **defining vertically oriented openings** arranged **between the lid and basket body** to enable bi-directional cooling airflow through interior of the container”. Applicants’ respectfully assert that the *Sharp* reference does not include at least these limitations and accordingly is insufficient to establish a *prima facie* of anticipation as to Claim 65.

Specifically, the *Sharp* patent does not teach smooth walled containers. The applicants point out that *Sharp* teaches a container almost entirely covered with ribbed wall surfaces (shown to great effect in, for example, Fig. 2 e.g., ribs or grooves 18) which in practice damage and dent fruit during shipping. This is particularly troublesome problem when used to package soft fruit (e.g., strawberries, raspberries, and the like). Again, *Sharp* is precisely the type of container that the present invention is designed to replace.

Additionally, *Sharp* does not teach “**openings** arranged **between the lid and basket body** to enable bi-directional cooling airflow through interior of the container”. One set of openings 12’ in *Sharp* are configured to permit ventilation in one direction (i.e., parallel to the major axis of the container. See, for example, *Sharp* at Fig. 4). However, the aperture defined by 3c & 4c of *Sharp* does not provide the required second direction of cooling airflow. This is because there are no outlet openings on the side of the container opposite of the 3c/4c opening. Moreover, even if there were such openings there would still be no airflow. This is because the solid hinge (defined by 5-9 of *Sharp*) would also block the path of airflow. Thus, the ventilation openings of *Sharp* cannot enable bi-direction cooling flows to pass through the container. Accordingly, *Sharp* does not teach all limitations of Claim 65. Consequently, *Sharp* fails to establish a *prima facie* case of anticipation as to Claim 65. Accordingly, the applicants respectfully request that this ground of rejection be withdrawn and Claim 65 be allowed.

The applicants point out that many independent bases exist to support the patentability of the dependent claims. However, in view of the underlying sufficiency of the base claims, a discussion of each independent ground of patentability is not deemed necessary at this time. Thus, for at least the reasons discussed above with respect to Claim 65 it is also submitted that a *prima facie* case of anticipation has not been established with respect to dependent **Claim 78**. Consequently, Applicants respectfully request that this ground for rejecting Claim 78 also be withdrawn.

Rejections Under 35 U.S.C. § 103

Rejections based on *Sharp* and *Borst*:

Claims 39, 45, 47, 48, 58, 61, 64, 66, 79, 84, and 85 have all been rejected under 35 U.S.C. § 103 as being unpatentable over *Sharp* in view of *Borst et al* (USPN 4,570,818 hereinafter “*Borst*”).

Claims 58, 61, 64, 66, and 79 have all been cancelled, thus these rejections are moot as to those claims. Claim 39 is amended and the rejections of **Claims 39, 45, 47, 48, 84, and 85** are respectfully traversed.

As amended, the applicants’ respectfully assert that the cited art is insufficient to establish a *prima facie* of obviousness as to Claim 39. Claim 39 has been amended to recite “a plurality of ventilation slots ... arranged to enable ... b i-directional airflow of cooling air ~~can~~ to pass through the interior of the container”. Applicants’ respectfully assert that the cited art does not include this limitation and accordingly is insufficient to establish a *prima facie* of obviousness.

As explained above with respect to the *Sharp* anticipation rejection, the cited combination does not teach “ventilation slots formed between the basket body and the lid ... arranged to enable ... **bi-directional airflow** of cooling air ~~can~~ to pass through the interior of the container”. This shortcoming is fatal to the asserted obviousness rejection.

First, ventilation openings are not taught or depicted in **Borst** at all. Accordingly, the *Borst* reference contributes nothing beyond what is taught in *Sharp*. As discussed above, *Sharp* also fails to establish a *prima facie* case of obviousness. As previously explained, a first set of openings 12’ (in *Sharp*) are configured to permit ventilation in one direction. Secondly, the aperture defined by 3c & 4c of *Sharp* provides a second aperture but does not provide a second direction of cooling airflow. This is because there are no outlet openings on the side of the container opposite of the 3c/4c opening. Thus, the ventilation openings of *Sharp* cannot

enable the bi-direction cooling flows described in the specification (See, e.g., Fig. 9) to pass through the container. Accordingly, cited art does not teach all limitations of Claim 39 and therefore fails to establish a *prima facie* case of anticipation. Accordingly, the applicants respectfully request that this ground of rejection be withdrawn and Claim 39 be allowed.

The applicants point out that many independent bases exist to support the patentability of the dependent claims. However, in view of the underlying sufficiency of the base claims, a discussion of each independent ground of patentability is not deemed necessary at this time. As one example, the applicants point out that the cited art does not include “a second set of ventilation slots includes at least *one ventilation slot arranged at each end of a minor axis* of the container” (emphasis added). This is just one example. Accordingly, for at least the reasons discussed above with respect to Claim 39 it is also submitted that a *prima facie* case of anticipation has not been established with respect to dependent **Claims 45, 47, 48, 84, and 85**. Consequently, Applicants respectfully request that these grounds of rejection also be withdrawn.

Rejections based on *Sharp, Borst and Hayes*:

Claims 67, 70-72, 74, and 75 have all been rejected under 35 U.S.C. § 103 as being unpatentable over *Sharp* in view of *Borst* and further in view of *Hayes et al* (USPN 6,644,494 hereinafter “*Hayes*”).

Claims 71 and 72 have been **cancelled**, thus these rejections are moot as to those claims. Claim 39 is amended and the rejections of **Claims 39, 45, 47, 48, 84, and 85 are respectfully traversed**.

As amended, the applicants’ respectfully assert that the cited art is insufficient to establish a *prima facie* of obviousness as to Claim 67. Particularly relevant is the amendment to independent Claim 65 which recites a “plurality of ventilation slots ... arranged between the lid and basket body”. To this is added is the Claims 67 limitation of “the plurality of ventilation slots include at least one ventilation slot formed in each side of the container”. None of the cited art includes ventilation slots, between the lid and basket body, at the back side (the side with the hinge in it) of the container as recited in Claim 67. Accordingly, applicants’ respectfully assert that the cited art does not teach all of the claim limitations and therefore fails to establish a *prima facie* of obviousness. At least the same can be said for the dependent claims which include these features. This of course sets aside the extremely relevant point of whether the *Hayes* patent should have been granted at all in view of the prior art in existence at the time.

Rejections based on *Sharp* and *Hayes*:

Claims 80 and 81 have all been rejected under 35 U.S.C. § 103 as being unpatentable over *Sharp* in view of *Hayes*. **Claims 80 and 81** have been **cancelled** making moot this ground of rejection. Accordingly, the applicants ask that this ground of rejection be withdrawn..

Rejections based on *Lovatt*, *Quong*, and *Morgan*:

Claims 41-43 and 59 have all been rejected under 35 U.S.C. § 103 as being unpatentable over *Lovatt* in view of *Quong* (USPN 4,618,069) further in view of *Morgan* (USPN 3,651,977).

Claim 59 is cancelled, thus this ground of rejection is moot as to those claims.

As explained above in the discussion of base Claim 39 (parent of Claims 41-43), *Lovatt* is insufficient to establish a *prima facie* of anticipation. It is insufficient because, *Lovatt* does not teach or suggest “smooth sided walls” or “a latch for securing the lid to said basket body”.

Nothing in the added *Quong* or *Morgan* references corrects this shortcoming.

Additionally, *Lovatt* did not teach “ventilation slots ... arranged to enable ... b i-directional airflow of cooling air ~~can~~ to pass through the interior of the container”. As explained above, the *Lovatt* configuration creates a container that “imparts a ‘panting’ effect” (*Lovatt* 4:15-19) as its mode of ventilation. As explained, this configuration does not enable bi-directional cooling. Again, nothing in the added *Quong* or *Morgan* references corrects this shortcoming. Consequently, the cited art fails to make obvious dependent Claims 41-43. Accordingly, the applicants respectfully request that this ground of rejection be withdrawn and Claims 41-43 be allowed.

Rejections based on *Lovatt* and *Dehart*:

Claim 46 is rejected under 35 U.S.C. § 103 as being unpatentable over *Lovatt* in view of *Dehart*. Claim 46 has been cancelled making this ground of rejection moot. Accordingly, applicants request that this ground of rejection be withdrawn.

Rejections based on *Lovatt* and *Timm*:

Claim 61 is rejected under 35 U.S.C. § 103 as being unpatentable over *Lovatt* in view of *Timm*. Claim 61 has been cancelled making this ground of rejection moot. Accordingly, applicants request that this ground of rejection be withdrawn.

Allowable Subject Matter:

The Office Action allows Claims 38, 50 and 83. Claims 86-88 have been added and these claims depend from allowable Claim 38. Accordingly it is believed that all such claims are in condition for allowance at this time.

Claims 40, 55, 73 and 82 are objected to. Claim 82 is cancelled making this objection moot. Claims 40, 55, and 73 remain unamended as the underlying claims are argued as allowable. However, the applicants do not object to the amendment of these claims at some later times should it become necessary. Accordingly it is believed that all pending claims are in condition for allowance at this time.

Conclusion:

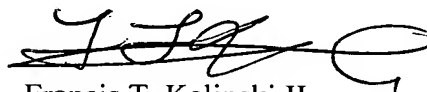
In view of the foregoing amendments and remarks, it is respectfully submitted that the claimed invention as presently presented is patentable over the art of record and that this case is now in condition for allowance.

Accordingly, the applicants request withdrawal of all pending rejections and request reconsideration of the pending application and prompt passage to issuance. The applicants further clarify that any lack of response to any of the issues raised by the Examiner is not an admission by the applicant as to the accuracy of the Examiner's assertions with respect to such issues. Accordingly, applicant's specifically reserve the right to respond to such issues at a later time during the prosecution of the present application, should such a need arise.

As always, the Examiner is cordially invited to telephone the applicants representative to discuss any matters pertaining to this case. Should the Examiner wish to contact the undersigned for any reason, the telephone numbers set out below can be used.

Respectfully submitted,

BEYER WEAVER & THOMAS, LLP

A handwritten signature in black ink, appearing to read 'F. T. Kalinski II', with a stylized flourish at the end.

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